/152 cont./

596 428 [191] in Roman law (28) and Byzantine law, as well as in the present civil code of Greece (29) and in certain modern European codes. (30)

28. See C., c.7.8. - Ulpien: 26,2.

29. See article 1813.

30. See German code, article 1924, etc.

Daughters do not inherit. Their exclusion extends also to their offspring who have no right to the patrimony of their maternal grandfather. The inheritance concerns only the "agnates" and their personal families.

596 428 768 For her part the widow inherits nothing from her husband. However, her sons reserve for her a small share of the family fortune, not by right of inheritance, but rather out of fairness and respect--which calls to mind the fourth portion (quarta legitimae partis) of late Roman and Byzantine law in favor of the widow who is without a dowry and indigent. However, the participation of the widow in the inheritance remains, in fact, theoretical since no right of free dispostion of her share is allowed her. Upon her death her belongings, which moreover she does not [422] manage, will be handed down to her sons. However, her "paraphernalia," the trousseau which she brought along when she married belong to her "ipso jure" /by the law itself/. She may therefore dispose of this as she wishes.

596 42[illegible] 428 [613] [612] The heirs do not divide "in natura" the patrimony. It is precisely here that we recognize without any question the system of co-ownership between members of the family in the "horizontal form," which, in the final analysis, concerns the sons and the beneficiary kindreds of the lineage. The patrimony remains indivisible. This does not constitute a kind of primitive communism, especially since not all the members of the family have rights of inheritance, but only certain ones. /153/ Collective ownership and ownership in common "pro parte indivisa" are clearly distinct in the sense that where co-ownership is recognized,

/171 cont./

596 171 [113] 44. See J. Declareuil: Rome et l'organisation du droit, p. 102 f. See also the analysis of this family by E. Durkheim in the account of G. Davy, ibid., pp. 11-115.

(all of which are prototypic examples of the patriarchal family), with the Sarakatsani extended family, we note that:

[796] --The head of the Sarakatsani family is not in direct contact with any supernatural being (gods, heroes, deified ancestors) whose worship he would insure or of which he would be the incarnation.

--Moreover, he does not have the patria potestas /power of a Roman father/, (45)

45. See Cic. p. domo. 29, D. 50, 16, 195. 2.

which would authorize him to cast away his wife, to abandon his child, to make decisions concerning the life and death of his subjects. (46)

46. See G. 1, 134, 3, 199. P. 5, 11, 1. C.J. 7,7,16,1.

[595] [848] /172/--Likewise, he does not have the right to be polygamous (as is the case of the Israelite family), nor to have concubines, nor to grant or deny, as he pleases, the legitimacy of his children.

[768] --Finally, his death does not bring about the dissolution of his family as autonomous lineages (Rome), nor the automatic succession of his eldest son (Greece), or of the son instituted by him (Israel).

596 593 171 428 Furthermore, on the purely material level, the rights of the Sarakatsani son to his patrimony may be exercised during his father's lifetime. In Rome, the sons did not even have command over the fruits of their personal labor. In Greece, the patrimony, always indivisible, was transmitted from one generation to another. In Israel, finally, the son invested with the succession had all rights over the family fortune, while his brothers were entirely dispossessed.

596 Although cursory, this review of the principal traits of specific patriarchal families which, futhermore, did not recognize kinship through women justifies our point of view: the Sarakatsani extended family is not patriarchal in the strict sense of the term.

/205 cont./

671 [128] We shall conclude with certain critical reflections and an appreciation of Sarakatsani law.

Non-Criminal Law

Rules of law concerning family life.

Thanks to the detailed study of marriage and the family among the Sarakatsani, the corresponding laws are well known to us.

The rules of betrothal (the societal control of future spouses, the consent of the parents and the solemn confirmation by the exchange of gifts), the obstacles to marriage, kinship and its forms, the obedience of the wife and her protection, the internal hierarchy of the family, the legitimization of descendents (control, formal acceptance), conjugal fidelity and the widowed state, co-ownership of the patrimony, the shared business, the types management and internal organization of the extended family, the societal control of income, its distribution and accumulation, the hierarchy within the extended family, the right to separate from it, /206/ finally inheritance rights constitute so many issues for which legal regulation is required, as we have emphasized in the corresponding sections.

671 429 768 602 If the children are minors at the death of their father, a family council consisting of the nearest male relatives in the paternal as well as the maternal line undertake their guardianship and the management of their patrimony.

Although this principle is always valid, the guardianship is, in fact, almost exclusively exercised by a single individual, the nearest relative of the father, preferably his brother. The relatives of the father who take part in the family council are in reality more influential than the maternal relatives. The participation of the latter remains occasional, for it is necessary that they belong to the same [494] [596] Tséligato as the paternal relatives, or that the respective Tséligatos of the two parties be neighbors.

/206 cont./

671 However, in view of the fact that the woman is considered a
768 minor in the Sarakatsani family, the problem of a "quasi-guardian"
562 of the widow arises in a case where the children are also minors or
429 if there are no children. The widow is then placed under the protec-
[602] tion, economic as well as social, of the relatives of her husband and continues to be part of their family.

* * * *

671 A general idea of the law bearing on family matters having thus been established, we must now examine some particular aspects.

As one moves away from purely familial relationships to those of predominantly economic interests, one passes from rules of a strict nature to more permissive rules.

671 Everything that pertains to the moral aspect of the family assumes
593 the form of strict law. (19)

19. This family law is simply the law defining the situation the condition (the "legal status" of jurists) of each member of the family and social group. Its rigid character derives thus from its nature and from the social function of the latter. See analogous concepts in: G. Davy: La foi jurée, p. 371.

Everything that pertains to the management and the utilization of wealth allows arrangements according to the wishes of the persons concerned. Though no deviation from what is prescribed is tolerated in a marriage arrangement, in the regulation of the members of the family or their hierarchy, /207/ the distribution of income or its hoarding, co-ownership or co-exploitation may assume whatever forms and modalities the parties decide upon.

671 The only exception has to do with inheritance, for a father never
593 has the right to /arrange for/ the disposal of his goods after his death
428 otherwise than as prescribed by custom. Wills are unknown. Now this